

1. Status Of The Claims

Applicant acknowledges renumbering of the claims as claims 1-130.

2. Priority Claim

While the Examiner has acknowledged Applicant's claim for priority to Austrian Application A89599, he has indicated that no certified copy of the Austrian application has been submitted.

Applicant respectfully notes that, in the papers originally filed November 16, 2001, a certified copy of said document was in fact submitted. Attached hereto is a copy of the paper, "Submission of Priority Document," as well as the stamped return receipt postcard indicating that the priority document was received by the Patent Office. Therefore, Applicant believes that the requirements for the priority claim have been met. However, if the Examiner is unable to locate the Austrian priority document, another will be obtained by Applicant upon the Examiner's request.

3. Response To Restriction Requirement

The Examiner has identified twelve separate inventions in the pending claims, and has required Applicant to restrict prosecution in this application to one of those inventions. In response, Applicant hereby elects to prosecute the invention of Group I, Claims 1-104, drawn to a topical medicament to stop bleeding, without prejudice to the prosecution of the subject matter of other claims in other patent applications. Applicant makes this election without traverse.

In addition, for the invention of Group I, the Examiner requires Applicant to select one of the following species: a structural protein (claims 2-5), a cell stimulating factor

(claims 5-8), an enzyme or enzyme inhibitor (claims 9-16), an antiadherent, antioxidant or antimicrobial (claims 17-32), a blood coagulation zymogen (claims 33-64) or a particulate cell element (claims 65-95). Applicant respectfully traverses this requirement. Claim 1 requires the presence of components (i)-(iv). The dependent claims do not relate to *species* of components (i)-(iv); rather, they add additional components (the language "further comprising" is used). Accordingly, Applicant should not be required to limit examination of the claims to any of the suggested categories of subject matter, as they do not, in fact, represent species of claim 1 but rather the invention of claim 1 containing additional components. Applicant does not admit, in traversing the species requirement, that the addition of any of these additional components, beyond the four recited in claim 1, is an obvious variant.

Despite traversing the species requirement, Applicant, because he is required to select one of the offered species, selects species (1), structural proteins, as covered in claims 2-4, 6, 7, 8, 10, 11, 12, 14, 15, 16, 18, 19, 20, 22, 23, 24, 26, 27, 28, 30, 31, 32, 34, 35, 36, 38, 39, 40, 42, 43, 44, 46, 47, 48, 50, 51, 52, 54, 55, 56, 58, 59, 60, 62, 63, 64, 66, 68, 70, 72, 74, 76, 78, 80, 81, 83, 85, 87, 89, 91, 93, 95, 97 and 98. This election is made without prejudice to any of the other categories of subject matter offered as species (2)-(6).

In addition, in the Communication the Examiner notes that Applicant has not selected a species among the species of structural proteins selected. This was an inadvertent omission. Applicant accordingly elects, with traverse, the species of structural protein, allogenic collagen, which has been subjected to a process selected from the group consisting of virus depletion, virus inactivation, and a combination thereof.

4. **Further Response To The Restriction Requirement And Communication**

Therefore, the invention elected is Group I, elected species (A) is structural proteins, and elected species (B) is allogenic collagen which has been subjected to a process selected from the group consisting of virus depletion, virus inactivation, and a combination thereof, all with traverse and without prejudice to the prosecution of non-elected subject matter in other applications.

In the Communication, the Examiner has indicated that the basis for the traversal of the species requirement is not understood. In addition to the reasons above, Applicant offers the following further explanation.

By way of example, claim 1 relates to a medicament comprising the following four elements: (i) an agent selected from the group consisting of fibrinogen and fibrin; (ii) thrombin; (iii) a transglutaminase; and (iv) a serpin protease inhibitor. To determine the patentability of claim 1, the prior art would be reviewed to determine whether compositions containing any of elements (i)-(iv) were previously disclosed. Attorneys for Applicant would understand the compositions of claim 1, comprising elements (i)-(iv), to be a genus, and would understand a *species* of such generic composition to comprise a *species* of element (i), (ii), (iii) or (iv).

Instead, the species election requirement does not relate to a species of element (i)-(iv), but instead to a *further addition* to the generic composition of claim 1. In other words, the species of structural proteins elected do not constitute a subset of elements (i)-(iv), but rather a new addition – an element (v). For example, see the specification at page 6, lines 3-7, which state:

A preferred embodiment of the medicament according to the invention is characterized in that it contains, as *further* active substances, allogenic collagens subjected to a process for virus depletion and/or virus inactivation. The additional use of collagens in the preparation or formation of the allogenic provisional extracellular matrix considerably enhances its biomechanical quality.*(emphasis added)*.

By making the species election requirement, the Examiner is effectively denying Applicant a claim of the scope of claim 1, comprising elements (i)-(iv), and is requiring the presence of a limitation not present in claim 1, namely, an element (v). Applicant believes that this is not proper. Applicant should be entitled to an examination of claim 1 without further elements being included. The species of structural proteins as articulated in the dependent claims *is not* a species of any of elements (i)-(iv).

For these reasons, reconsideration of the species election requirement is respectfully requested.

Respectfully submitted,
BAKER BOTTS LLP



Lisa B. Kole
Patent Office Reg. No. 35,225

Attorneys for Applicant
(212) 408-2500